

# DECLARATION AND POWER OF ATTORNEY

(For Use with Application Data Sheet)

As the below named inventor(s), I/we declare that:

This declaration is directed to:

The attached application, or  
 was filed as PCT international application Number \_\_\_\_\_ on  
  
 Application No. \_\_\_\_\_, filed on \_\_\_\_\_  
 as amended on \_\_\_\_\_ (if applicable);

I believe that I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought.

I/we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application, if applicable;

I/we hereby appoint the practitioners at CROWELL & MORING L.L.P., whose Customer Number is:



23911

PATENT TRADEMARK OFFICE

as my/our attorneys to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith; and

All statements made herein of my/our own knowledge are true; all statements made herein on information and belief are believed to be true, and further these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

FULL NAME(S) of INVENTOR(S)

Signature: Xiaodong LI  
 Inventor one: Xiaodong LI  
 Citizen of: China

Date: 6/17/03

Signature: Hong XU  
 Inventor two: Hong XU  
 Citizen of: China

Date: 6/18/03

Signature: Lena STASZEWSKI  
 Inventor three: Lena STASZEWSKI  
 Citizen of: Sweden

Date: 17 June 2003

Signature: \_\_\_\_\_  
 Inventor four: Jon Elliott ADLER  
 Citizen of: United States of America

Date: \_\_\_\_\_

Additional Inventors on Attached sheet if checked

Attorney Docket: 100337/54270104US  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: XIADONG LI ET AL.

Serial No.: 10/319,821 Group Art Unit:

Filed: DECEMBER 16, 2002 Examiner:

Title: CHIMERIC GATIPHAL 15 VARIANTS AND THEIR USE IN THE ANALYSIS AND DISCOVERY OF MODULATORS OF G-PROTEIN COUPLED RECEPTORS

SECOND DECLARATION BY ROBIN L. TESKIN IN SUPPORT OF §1.47(a) PETITION

**Mail Stop**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Robin L. Teskin, declare and state as follows:

- (1) That I am a registered patent attorney and represent Senomyx, Inc. in connection with patent matters.
- (2) That in that capacity, I filed the above-identified application on December 13, 2002.
- (3) That I provided a copy of the as-filed patent application, priority documents, combined Declaration and Power of Attorney and Assignment to Senomyx and asked that they provide a copy of these papers to all the inventors for review and signature. That on June 19, 2003, I received the signed Declaration and

Assignment from Senomyx, signed by all of the inventors, except for Jon Elliot Adler.

(4) That on July 3, 2003, I sent via Federal Express, a copy of this as-filed patent application, priority documents, Assignment and Declaration to Dr. Adler's counsel. A copy of my letter is attached hereto as Exhibit A. The enclosure with this letter is the as-filed application (specification, figures, claims), priority documents, Assignment and Declaration papers.

(5) That as of the present date, I have not received any communication from Dr. Adler or his attorney in connection with this request. Also, I am aware that they were received as they were signed for by Ms. Spencer, and were sent to what I know to be the correct address for Ms. Spencer.

(6) Relevant to my request for signed documents, I received via e-mail on May 27, 2003, a letter from Ms. Spencer in connection with my request for Dr. Adler's signature on patent documents for another Senomyx patent application for which Dr. Adler was properly identified as an inventor. (Exhibit B to this Affidavit). This letter essentially acknowledges that Dr. Adler has a continuing contractual obligation (based on his employment agreement with Senomyx) to sign documents for Senomyx patent applications that he is a named inventor. However, Ms. Spencer indicates in her letter that as of May 27, 2003, the parties to this agreement (Dr. Adler and Senomyx) have been unable to reach an agreement concerning financial compensation for Dr. Adler's services in connection with review of Senomyx patent documents. Dr. Adler was terminated from Senomyx, Inc., the

assignee of this application, on May 10, 2002, and has requested financial compensation for review of patent documents.

(7) That as of the present date, Senomyx and Dr. Adler have been unable to reach an agreement regarding his compensation for review of patent documents.

(8) That as of May 10, 2002, the date Dr. Adler was terminated from the company, Dr. Adler nor his attorney has not provided any signed patent documents to the subject Assignee or Applicants' patent counsel. This is notwithstanding diligent efforts, and several telephone conversations by the undersigned with Dr. Adler's attorney, informing her that the need for such signed documents in order to satisfy legal requirements for filing of patent applications in the United States and abroad.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both,

under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

August 5, 2003

  
ROBIN L. TESKIN  
Registration No. 35,030

CROWELL & MORING, LLP  
P.O. Box 14300  
Washington, DC 20044-4300  
Telephone No.: (202) 624-2500  
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RLT:mld

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: XIADONG LI ET AL.

Serial No.: 10/319,821 Group Art Unit:

Filed: DECEMBER 16, 2002 Examiner:

Title: CHIMERIC GATIPHAL 15 VARIANTS AND THEIR USE IN THE ANALYSIS AND DISCOVERY OF MODULATORS OF G-PROTEIN COUPLED RECEPTORS

DECLARATION BY ROBIN L. TESKIN IN SUPPORT OF PETITION  
PURSUANT TO 37 C.F.R. §1.137(a) and (b) AND RULE 53 FOR REVIVAL  
ON THE BASIS THAT THE APPLICATION SHOULD HAVE BEEN  
AWARDED A FILING DATE BECAUSE THE FIGURES WERE ACTUALLY  
OR CONSTRUCTIVELY INCLUDED OR ALTERNATIVELY ARE NOT  
NECESSARY FOR AN UNDERSTANDING OF THE INVENTION AND  
BECAUSE APPLICANTS' FAILURE TO TIMELY RESPOND TO THE  
ERRONEOUS NOTICE OF INCOMPLETE APPLICATION WAS  
UNAVOIDABLE OR UNINTENTIONAL

Mail Stop  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Robin L. Teskin, declare and state as follows:

- (1) That I am a registered patent attorney.
- (2) That in that capacity, I represent Senomyx, Inc. in connection with its intellectual property matters.
- (3) That further in this capacity, I prepared and filed the above-submitted patent application on December 16, 2002.

(4) That it is my practice on filing of patent applications to compare the items included with the application papers submitted to the Patent Office with the items listed on the postcard submitted to the Patent Office.

(5) That the postcard submitted to the Patent Office with this application makes reference to two figures, and that this postcard was stamped by the Patent Office (attached as Exhibit A to this Declaration). Therefore, I believe that these figures were filed with the Application papers submitted to the Patent Office on December 16, 2002.

(6) That my belief is further supported by the fact that the copy of the application papers submitted to the Patent Office contained in my file for this application includes these figures.

(7) That the as-filed application prepared by me further incorporates by reference in its entirety U.S. Provisional 60/339,466 filed on December 14, 2001, which contains the same figures (Exhibit B to this Declaration).

(8) That I unintentionally or unavoidably failed to timely respond to the Notice of Incomplete Application mailed by the Patent Office on February 27, 2003, because this paper was not received in our office until after the two-month non-extendable due date of April 27, 2003 had lapsed.

(9) That this delay was unintentional or unavoidable in part because of my relocation from Pillsbury Winthrop LLP to Crowell & Moring LLP.

(10) Specifically, I moved from Pillsbury Winthrop LLP to Crowell & Moring LLP on March 21, 2003. On that date, I had no patent files in my

possession as I only notified my clients of my departure on my start date at Crowell & Moring LLP. I was not permitted to notify my clients earlier because of ethical rules, which I strictly followed.

(11) On March 21, 2003, I contacted the clients that I was working with including Senomyx, Inc. of my relocation to Crowell & Moring LLP. At that point, I inquired whether Senomyx desired to transfer their files to Crowell & Moring LLP, or to retain their files at Pillsbury Winthrop LLP. Senomyx advised me that they wanted to transfer their files to Crowell & Moring LLP. A transfer letter from Senomyx directing transfer of all their files from Pillsbury to Crowell & Moring was received by Crowell & Moring on April 1, 2003.

(12) On or about April 2, 2003, we started receiving the transferred files into our offices along with other transferred client files. In total, approximately 1000 files were transferred into Crowell & Moring LLP from Pillsbury Winthrop LLP.

(13) Because Crowell & Moring LLP uses a different electronic docket system than does Pillsbury Winthrop LLP (Pattsy docket system, rather than CPI docketing system used by Pillsbury Winthrop), we diligently began the process of manually docketing transferred cases into Crowell & Moring LLP's electronic docket system. Also, because of the large volume of transferred cases we gave priority to the docketing of cases with imminent due dates. As I am the responsible attorney for Senomyx matters, as well as several other transferred clients, I closely reviewed all Senomyx transferred files and had the most imminent due dates manually

introduced into our electronic docket system. As evidence of this fact, I provide a copy of an electronic docket dated April 11, 2003, that includes all due dates spanning April 11 through April 28, 2003 (Exhibit C). On inspection of this docket record, it can be seen that there is no entry for this Application on April 27, 2003. Likewise, electronic docket reports printed on May 6, 2003 (Exhibit D) and May 7, 2003 (Exhibit E) contain no docket entry for a Notice of Incomplete Application with a non-extendable due date of April 27, 2003. However, there are other Senomyx cases listed on all of these docket reports. This is because the file transferred to our office on or about April 2, 2003 did not include the Notice of Incomplete Application. Thus, I was unaware of the April 27<sup>th</sup> due date until after this due date had lapsed.

(14) Because of the large volume of transferred cases, and the fact that mail would continue to go to Pillsbury Winthrop LLP (the attorney of record) until we were able to prepare and file changes of address and Power of Attorney forms for roughly 1000 cases pending in the United States and a number of different foreign jurisdictions, I arranged for correspondence received by Pillsbury Winthrop LLP (until the changes in addresses were finalized) to be sent by courier from Pillsbury promptly on receipt to Crowell & Moring LLP. This was deemed necessary in order to avoid any due dates being missed.

(15) Also, I requested that my transition attorney at Pillsbury Winthrop LLP send us all fax and mail correspondence promptly so that no due dates would be missed. Further, I instituted procedures at Crowell & Moring LLP whereby the correspondence received from Pillsbury Winthrop was reviewed by me on the day of

receipt (as I was the responsible attorney). I personally reviewed the correspondence because of my familiarity with the transferred cases, and because I am the responsible attorney. As part of my daily review of the correspondence received from Pillsbury, I promptly and diligently had the due dates entered into Crowell & Moring LLP's electronic docket system. As evidenced by the electronic docket report printed on May 7, 2003 (Exhibit E), the Notice of Incomplete Application was not received by Crowell & Moring LLP as of this date.

(16) On May 8, 2003, I first became aware of the Notice of Incomplete Application and the fact that the April 27, 2003 non-extendable due date had been missed. This is evidenced by the electronic docket dated May 9, 2003, which is the day after Crowell & Moring LLP received this paper from Pillsbury and I had this paper docketed it into Crowell & Moring LLP's electronic docket system. Had this paper been received earlier by Crowell & Moring LLP, because of correspondence and docketing procedures set up by me during my transition into Crowell & Moring LLP, this paper would have appeared on my docket as of May 7, 2003. This is evidenced by the fact that the docket records dated April 11, 2003 (encompassing April 11 through April 28, 2003), May 6, 2003 and May 7, 2003, contain many docket entries for Senomyx, but do not contain a docket entry for this application. These reports also establish that we promptly and diligently reviewed transferred Senomyx files we started receiving into our office on or about April 2, 2003 and that we promptly and diligently had the cases entered into Crowell's electronic docket system. Also, these electronic docket reports establish that as of May 7, 2003, I was

not in possession of, or aware of the Notice of Incomplete Application mailed by the Patent Office on February 27, 2003 advising that this application was allegedly incomplete and setting an April 27<sup>th</sup> response date. Rather, until May 8, 2003, I was not aware that this application did not receive a filing date because it allegedly did not include the figures.

(17) It was only on May 8, 2003 that I received this paper with other correspondence received from Pillsbury and docketed the April 27, 2003 due date (which by that point had passed). This fact is evidenced by a copy of an electronic docket reviewed by me that was printed on May 9, 2003 and which is attached as Exhibit F to my affidavit. Based on correspondence and docketing procedures in place during my transition, I can attest to the fact that this is the day after this paper was received in our office. I review and have docketed daily all correspondence received from Pillsbury Winthrop LLP daily for cases that I am the responsible attorney. Had this paper been earlier received, more particularly, had this paper been received by Crowell as of May 7, 2003, it would have appeared on my docket at least as of this date.

(18) Also, the failure to timely respond to this paper could not have been avoided by filing a change of address. As noted above, we only started receiving Senomyx files at Crowell & Moring LLP on April 2, 2003. We continued receiving transferred files from Senomyx and other clients for about a month. This is after the date that the Notice of Incomplete Application had been mailed. Moreover, as we did file the application with the figures (as substantiated by the stamped PTO

postcard), and based on the fact that the copy of the filing papers in the transferred file contained the figures, I had no reason to believe that a Notice of Incomplete Application setting a non-extendable two-month date for response would have been issued. Rather, upon review of the transferred file, I simply thought that a Notice of Missing Parts would soon be received, giving us the normal two-month response date, with extensions (up to five months) available under §1.136(a).

(19) That based on these facts and supporting evidence (my affidavit and exhibit attached hereto), my failure to respond to the Notice of Incomplete Application was unavoidable, or alternatively was unintentional.

(20) Promptly on discovery of the Notice of Incomplete Application and the missed due date, I called the Application Branch and researched what evidence was needed to revive the Application.

(21) Particularly, I noted that the following items were required for completion:

- (a) drawings (allegedly not filed)
- (b) Statutory fee of \$375
- (c) Oath or declaration by inventor
- (d) Computer readable form of sequence listing

(22) I immediately noted that our copy of the filed application included the figures, and that the figures were noted on the postcard filed with and stamped by the Patent Office. Therefore, had I timely received the Notice, proof was available substantiating that the figures were filed. Also, I noted that the application I prepared incorporated by reference U.S. Serial No. 60/339,466 which contained the

allegedly omitted figures 1 and 2. Alternatively, I noted that the figures are not necessary for an understanding of the invention and could be deleted if necessary to procure the original filing date (if the Patent Office did not accept the postcard evidence).

(23) At that point, I diligently sent a copy of the Application to the service we use to prepare sequence listings.

(24) Also, I had prepared an Inventors' Declaration and Assignment for signature by all of the inventors. Unfortunately, then I ran into an obstacle with a non-signing inventor, (Jon Elliot Adler). As evidenced by a Petition Under 37 C.F.R. §1.47(a) filed herewith, Dr. Adler, via his attorney, was sent a copy of this Application and Oath, but has refused to sign this paper.

(25) Specifically, established by the Petition under §1.47(a), Dr. Adler was terminated from Senomyx on May of 2002. Dr. Adler was provided a copy of the as-filed application, including figures, specification and claims, and the accompanying declaration and assignment via his attorney, Ms. Marilynn Mika Spencer. While we requested that the signed documents be provided to us no later than July 20, 2003, the documents have not been received in our office. Therefore Applicants are unable to provide an executed declaration by Dr. Adler.

(26) Based thereon, I prepared a Petition and Response to Incomplete Application, which includes all necessary items to complete the present application except for an executed declaration by Jon Elliot Adler. In lieu thereof, a Petition Under §1.47(a) is filed herewith along with evidence in support thereof.

I further declare that all statements made herein of my own knowledge are true and that all statements made n information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

August 5, 2003

  
ROBIN L. TESKIN  
Registration No. 35,030

CROWELL & MORING, LLP  
P.O. Box 14300  
Washington, DC 20044-4300  
Telephone No.: (202) 624-2500  
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RLT:mld



EXHIBIT A

July 3, 2003

Marilynn Mika Spencer, Esq.  
2044 First Avenue  
Suite 200  
San Diego, CA 92101

RE: ASSIGNEE: SENOMYX INC.  
INVENTOR(S): XIADONG LI ET AL.  
TITLE: CHIMERIC GA15 VARIANTS FOR USE IN ASSAYS AND  
DISCOVERY OF MODULATIONS OF G-PROTEIN COUPLED  
RECEPTORS  
SERIAL NO.: 10/319,821; FILED: DECEMBER 16, 2002;  
OUR REF: 100337.542704US

Dear Ms. Spencer:

Enclosed, please find an Assignment and a Declaration and Power of Attorney to be signed by Dr. Elliot Adler. After obtaining his signature, please return the signed documents to us no later than JULY 20, 2003

Thank you in advance for your assistance.

Very truly yours,  
  
ROBIN L. TESKIN

Enclosures

RLT:mld

EXHIBIT BLaw Offices of  
Marilynn Mika Spencer

2044 First Avenue, Suite 200  
 San Diego, CA 92101  
 (619) 233-1313 telephone  
 (619) 233-1314 facsimile

43537 Ridge Park Drive  
 Temecula, CA 92590  
 telephone (909) 694-6337  
 facsimile (909) 695-2442

May 27, 2003

*By First Class Mail and e-mail*

Janice P. Brown  
 Vantage Law Group LLP  
 4370 La Jolla Village Drive, Suite 860  
 San Diego, CA 92122-1252  
 brown@vantagegroup.com

Re: Senomyx' Patent Applications;  
 Dr. Elliot Adler and Senomyx

Dear Ms. Brown:

This is a request for assurances that Senomyx intends to reasonably compensate Elliot Adler for post-termination work he may perform at the company's request, pursuant to the Employee Proprietary Information and Inventions Agreement ("Agreement") signed by the company and by Dr. Adler. Paragraph 2.8 of the Agreement obligates Senomyx to compensate Dr. Adler for this type of post-termination work "at a reasonable rate after [his] termination for the time actually spent by [Dr. Adler] at the company's request." Any such work is to be "at the cost and expense of the Assignee [Senomyx] . . . ."

Senomyx has requested Dr. Adler's post-termination review of documents pertaining to its patent applications for inventions on which Dr. Adler was an inventor, and his signature on appropriate related documents. When I spoke with Senomyx' patent attorney, Robin Teskin, on April 15, 2003 on this subject, I attempted to make arrangements for Dr. Adler's reasonable compensation. Ms. Teskin said she does not represent Senomyx for any purpose other than pursuing patent applications, and referred me to Senomyx for these arrangements.

Even before that phone call, I had attempted to make compensation arrangements with you (e.g. through my August 20, 2002 letter to you), but you closed off communication. Subsequently, after Senomyx contacted Dr. Adler directly in March 2003, I again initiated contact with you (and Ms. Teskin) by my letters of April 16 and April 24, 2003. You did not respond to either letter.

More recently, Ms. Teskin sent Dr. Adler a packet of documents for review. Her accompanying letter provided a new deadline for Dr. Adler's response and described the way she intends to complete the USPO paperwork if Dr. Adler has not signed off on the

Janice P. Brown  
May 27, 2003  
Page 2

applications by a stated date. Ms. Teskin did not address Dr. Adler's compensation for the requested work, your failure to respond to my communications, or my repeated assurances that Dr. Adler is ready to fulfill his contractual obligations.

Dr. Adler is willing to review Senomyx' patent applications and related documents, as requested by the company. However, in view of your silence since August 2002, Dr. Adler is suspending performance as permitted by law until he receives adequate assurances from Senomyx that it will perform its obligations under the Agreement. Given the apparent hostility Senomyx harbors toward Dr. Adler, the amount of compensation must be agreed upon in advance – otherwise, Dr. Adler will have performed, and Senomyx will be in a position to effectively determine – unilaterally – the amount of compensation.

Unless I hear from you by June 06, 2003, I will assume no adequate assurances forthcoming and Senomyx has repudiated the Agreement. Under those circumstances, Dr. Adler will be excused from any performance. Therefore, if the company is truly interested in obtaining Dr. Adler's services, I urge you to contact me to make appropriate arrangements.

Sincerely,

LAW OFFICES OF MARILYNN MIKA SPENCER

/s/

Marilynn Mika Spencer

MMS/psm

cc: Robin Teskin by e-mail only to  
[rteskin@crowell.com](mailto:rteskin@crowell.com)  
Dr. Elliot Adler